**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**

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| **In the Matter of** | ) | |
| | ) | |
| **Amendment of Section 25.131** | ) | **CC Docket No. 93-23** |
| **of the Commission's Rules** | ) | **RM-7931** |
| **and Regulations to Eliminate the** | ) | |
| **Licensing Requirement for Certain** | ) | |
| **International Receive-Only** | ) | |
| **Earth Stations** | ) | |

# COMMENTS OF THE SATELLITE BROADCASTING AND COMMUNICATIONS ASSOCIATION

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**May 12, 1993**

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# COMMENTS OF THE SATELLITE BROADCASTING AND COMMUNICATIONS ASSOCIATION

## I. INTRODUCTION

The Satellite Broadcasting and Communications Association, (SBCA) is pleased to submit its views to the Commission regarding the issues raised by the Notice of Proposed Rule Making (NPRM) in CC Docket No. 93-23.

SBCA is the national trade association of the satellite broadcasting industry and represents all of the major segments which are involved in supplying satellite home viewers with direct-to-the-home video and audio programming. These segments include the companies which manufacture, own, operate and/or lease the satellite transponders; the programmers who offer subscription services to home viewers; the satellite carriers which uplink and retransmit superstation and over-the-air network (in so-called "white areas" only) signals to the home; the manufacturers of receiving equipment and hardware; and the distributors and retailers who deal directly with consumers in the sale of home satellite dish (HSD) equipment and programming.

## II. OVERVIEW OF THE HSD INDUSTRY

The home satellite industry traces its history back to the mid-1970's, with the first operational private home satellite system being designed and installed by Stanford University Professor H. Taylor Howard in 1976. By 1980, Professor Howard's invention had given birth to a "cottage industry," with some 5,000 systems being installed nation-wide at a cost of over $10,000 each. The price of complete systems dropped rapidly in the early '80's which fueled a boom in satellite system sales. In 1985 alone, the industry shipped 735,000 systems at an average cost of $3000 - $3500.

This proliferation of HSD installations was largely the result of the FCC's decision in 1979 (Deregulation of Domestic Receive-Only Satellite Earth Stations, 74 FCC 2d 205, 218) to deregulate the private ownership of earth stations except those subject to the provisions of Section 25.131(j)(1). This section requires the licensing of receive-only earth stations operating with (1) Intelsat space stations; (2) International space stations; or (3) U.S. domestic and non-U.S. space stations for reception of services from other countries.

The "modern era" of satellite television began on January 15, 1986 when Home Box Office, Inc., began encrypting its satellite signal. It was then sold to those home satellite dish owners who had purchased a decoder. Several other program services quickly followed HBO's example and began encrypting or "scrambling" their satellite signals. These events ushered in an exciting new era for companies wishing to deliver programming direct-to-the-home.

Today, the HSD industry is clearly an "emerging technology," with over 4 million HSD systems having been shipped, and nearly 30,000 new systems entering the field each month. HSD households enjoy a "window on the world," filled with 200 or more channels of video programming, including 88 subscription services. In addition, nearly 100 audio services and an array of data services are instantly available to these households.

## III. SBCA SUPPORTS THE DEREGULATION OF EARTH STATIONS OPERATING WITH INTELSAT AND OTHER INTERNATIONAL SATELLITES.

The "window on the world" enjoyed by HSD owners opened even wider in 1992 when the Commission granted a limited waiver of Section 25.131(j)(1) for TVRO's operating with Intelsat K (Communications Satellite Corporation, 7 FCC Rcd 6028 Com. Car. Bur. 1992).

This enlightened action by the Commission has resulted in several new and innovative programming services becoming available to HSD households within the footprint of Intelsat K. Services such as Deutsche Welle TV, the German public television network; Radiotelevisione Italiana (RAI), Europe's largest radio and TV broadcaster and; TELEPLUS Germany, a German television and teletext network are now available directly to U.S. households via a small (26 - 35 inch) satellite antenna.

The beneficial impact of the Intelsat K waiver also extends to the hardware market. Intelsat K reception systems have become a welcome addition to the product offerings for satellite

retailers in the eastern half of the United States. While it is too early to estimate how large the market for dedicated Intelsat K reception hardware will be, SBCA is aware of significant consumer interest in the product.

SBCA believes that the Intelsat K experience should serve as a model for decision making on the broader issue of deregulation of TVRO reception of all Intelsat and international separate system signals. Retention of the existing licensing regulations serves no useful public purpose, while the lifting of such requirements could open the door for additional innovative programming services to be delivered to the HSD market. Such action would be in keeping with the long-standing and highly successful FCC policy of promoting diversity and choice in the programming market place.

It should also be noted that deregulation of HSD access to Intelsat and international separate system satellites is likely to pose no significant threat to the economic viability of the U.S. domestic satellite market place for the following reasons: (1) Most of the transponder capacity on the Intelsat satellites is devoted to voice and data circuits, with a limited number of video channels; (2) PanAmSat does carry a significant amount of video, however its easterly orbital slot results in a very low look angle for many U.S. HSD installations; (3) the new Columbia (TRDSS) separate system does not currently carry a significant amount of video traffic; and (4) many of the international satellites operate with circular polarization at C-Band as opposed to the "standard" linear polarization scheme used by domestic satellites. This requires HSD owners to purchase and install special

international feedhorns to access the signals. The cost of these "international feeds" can be relatively significant, thus, unlike the Anik and Morelos satellites which we discuss below, only a relatively small number of HSD owners are likely to equip their systems for international reception.

modification to the standard HSD installation is required to access the transborder services.

Section 25.131(j)(1) of the FCC rules requires that TVRO installations be licensed to access Anik and Morelos satellites. However, in view of the unencrypted availability of their signals, virtually none of these systems have been licensed in accordance with the regulation. Few if any dishowners are even aware of the existence of Section 25.131 (j) (1) of the FCC rules. Furthermore, from a practical standpoint, the existing FCC rule is unenforceable because clearly the Commission lacks the means or the desire to regulate millions of HSD owners who access non-U.S. satellites in the domestic satellite arc over North America.

SBCA also realizes that it would be a significant administrative burden upon the Commission if existing or future HSD owners were to begin filing license and frequency coordination applications under the provisions of Section 25.131 (j) (1). If only a small portion of the HSD units already shipped into distribution filed license requests, several tens of thousands of applications would flood the Commission. Even if the existing systems were

other than to bar non-U.S. programming services from legitimately serving the American HSD market with encrypted programming via Anik or Morelos, as the unencrypted programming is already available.

A "foreign programmer" seeking to sell encrypted programming to the U.S. market must now import or "backhaul" its signal into the U.S., downlink it at an American teleport, and then re-uplink it on a domestic U.S. satellite. This "double hop" process is cumbersome and prohibitively expensive. SBCA believes that the regulatory climate which requires this

Television and Telecommunications Commission's (CRTC) list of authorized signals. The two agencies work in concert -- thus, if a TVRO installation wishes to access a "non-CRTC-permitted" signal, the Department of Communications will refuse to grant the permit. It is interesting to note that both the Canadian and Mexican authorities have essentially "turned a blind eye" to the HSD markets in their respective countries. While TVRO's at cable headends are required to comply with licensing regulations, HSD's are largely "forgotten" due, SBCA believes, to the practical limitations discussed earlier.

It is also important for the Commission to understand that the restrictions placed on reception of U.S. programming in Canada and Mexico encourages citizens of these counties to access the signals via illegitimate methods. SBCA believes that many of the successful technological attacks on the security of the VideoCipher encryption system may have originated in Canada. Several hundred thousand modified decoders have been sold in Canada and Mexico in the last five years. In addition, the restrictions have fueled the growth of the programming "gray market." This term, applies to the use of an American residential address when purchasing satellite programming for an HSD installation which is actually located outside the U.S. Clearly restrictions placed on access to U.S. satellite signals in Mexico and Canada serve only to increase the research and development efforts of those attempting to circumvent the encryption systems used by U.S. programmers.

These restrictions on U.S. satellite operator's business seem highly unfair to SBCA in light of the fact that the U.S. is preparing to open its skies to all satellite operators, including

those based in Canada and Mexico. We urge the FCC to aggressively undertake deregulation discussions with the appropriate telecommunications bodies in these countries at the earliest possible date.

## VI. CONCLUSION

SBCA believes that satellite technology is bringing us closer and closer each day to a "Global Village." One needs only look to the role satellite technology played in bringing the world together to witness the jubilant celebrations as the Berlin Wall fell, the horror of Tiennamen Square, or the drama of the Gulf War. From watching the bombs fall on Baghdad to Neil Armstrong's first steps on the lunar surface, it was satellite communications which allowed the entire world to share the event.

The further development of this "Global Satellite Village" should not be constrained by artificial bureaucratic regulations which serve little if any purpose. It is for these reasons that SBCA supports the "delicensing" of receive-only antennas as outlined in the NPRM, and calls upon the FCC to work with Canadian and Mexican officials to lift their restrictions on the delivery of U.S. satellite signals.